

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-160316
	:	TRIAL NO. B-1104759A
Plaintiff-Appellee,	:	
vs.	:	
LAMAR SIMMONS,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In 2013, defendant-appellant Lamar Simmons was convicted after a jury trial of murder and having a weapon under a disability. The trial court sentenced Simmons to a term of life without the possibility of parole for 15 years for murder and 36 months' imprisonment for having weapons under a disability, with the sentences to be served consecutively.

Simmons appealed, and this court held that the trial court failed to make the requisite consecutive-sentencing findings and to incorporate those findings into the judgment entry. *State v. Simmons*, 2014-Ohio-3695, 19 N.E.3d 517, ¶ 120 (1st Dist.) ("*Simmons I*"). We vacated the consecutive sentences and remanded the cause for resentencing. *Id.* at ¶ 123.

Simmons then appealed to the Ohio Supreme Court. While the appeal was pending, Simmons was resentenced. Simmons appealed arguing that the court lacked jurisdiction to impose the sentences while his first appeal was pending. *State v. Simmons*, 1st Dist. Hamilton No. C-150187 (December 2, 2015). We agreed and

vacated the void sentences and remanded the cause for resentencing consistent with *Simmons I. Id.*

The court resentenced Simmons again on February 16, 2016, made the requisite findings to impose consecutive sentences, and incorporated those findings into the judgment entry. However, the court also resentenced Simmons on the murder and weapons-under-disability convictions. The murder sentence was amended to a term of life without parole for 18 years. Simmons appealed, raising three assignments of errors.

In his first and second assignments of error, he argues that the murder sentence of 18 years to life was contrary to law and unauthorized by law.

In *Simmons I*, we vacated the consecutive nature of the sentences and remanded the cause for the court to make the factual findings for consecutive sentences and to incorporate those findings into the judgment entry. The resentencing was limited to making the consecutive-sentencing findings and incorporating those findings in the judgment entry. *See State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 27 (clarifying that “only the offending portion of the sentence is subject to review and correction”). The remainder of the sentence remained valid. *See id.* at ¶ 17.

The trial court exceeded the scope of our remand by resentencing Simmons on the underlying offenses. *Id.* at ¶ 27. Because the court exceeded its authority when it resentenced Simmons on the underlying offenses, we vacate those parts of the judgment entry that addressed anything other than the consecutive-sentencing findings. Solely for this reason, we sustain Simmons’s first and second assignments of error.

In his third assignment of error, Simmons argues that the trial court erred by imposing consecutive sentences because the record did not support consecutive sentences. The record demonstrates that the trial court complied with R.C. 2929.14(C)(4) and found that the offenses were committed as part of a course of

conduct, the harm was so great and unusual to warrant consecutive sentences, and Simmons's criminal history demonstrated the need to protect the public.

Simmons and his codefendant carried out a plan to ambush the victim to avenge the mother of his three children. Simmons implicitly admitted to the mother of his children that he had shot the victim. Finally, Simmons stipulated to the prior conviction for the offense of having weapons under a disability. We, therefore, overrule Simmons's third assignment of error.

We note, however, that the original sentencing entry does not correctly reflect the sentence the court imposed at the original sentencing hearing. Simmons was sentenced to an indefinite term of life without the possibility of parole for 15 years for murder. However, the sentencing entry reflects a prison term of life.

Accordingly, we affirm the trial court's imposition of consecutive sentences and remand the cause to the trial court for the limited purpose of correcting the judgment entry nunc pro tunc to reflect that Simmons' term on the murder is life without the possibility of parole for 15 years.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**ZAYAS, P.J., MILLER and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on April 12, 2017

per order of the court \_\_\_\_\_.

Presiding Judge